IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 14015 of 1994

For Approval and Signature:

HON'BLE MR JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ARJUNBHAI PARBHATBHAI BHAVANI & 3 - Petitioner(s)

Versus

STATE OF GUJARAT & 7 - Respondent(s)

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Appearance :

MR MA KHARADI for Petitioner No(s).: 1,2,3,4 - 4.

MR PR ABICHANDANI, AGP for Respondent No(s).: 1, 2,3.

MR BG PATEL for Respondent No(s).: 4.

MR SK PATEL for Respondent No(s).: 5, 6, 7,8.

MR.DIPAK B PATEL for Respondent No(s).: 5, 6, 7,8.

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CORAM : HON'BLE MR JUSTICE AKIL KURESHI

Date : 03/08/2005

ORAL JUDGMENT

In the present petition, the petitioners have

challenged the orders passed by the revenue authorities as upheld by the Gujarat Revenue Tribunal under the provisions of section 84C of the Bombay Tenancy and Agricultural Lands Act (hereinafter to be referred to as “the Tenancy Act”). The predecessor in title of petitioners Nos.1, 2 & 3 and petitioner No.4 herein had jointly purchased the land bearing survey No.94 of village Pithapur admesuring 1 acre 15 gunthas by registered sale dated dated 3.2.81. Entries in this regard were made in the revenue record on 1.7.81. The Mamlatdar and ALT finding that the said transaction was opposed to the provisions of the Tenancy Act issued a notice under section 84 of the Tenancy Act on 29.9.83. After inquiry as envisaged under the Tenancy Act, the Mamlatdar by his order dated 24.4.84 declared the sale transaction as invalid. Upon remand by the Deputy Collector by a fresh order was passed by the Mamlatdar on 20th May 1986, by which after declaring the sale transaction as being opposed to the provisions of the Tenancy Act, the Mamlatdar provided that within 90 days, if the original position of the land is not restored, the same shall vest in the Government. The appeal filed by the petitioners against the said order of the Mamlatdar was rejected by the Deputy Collector on 31.3.88. Upon

rejection of the appeal, the petitioners approached the Gujarat Revenue Tribunal and the revision application also came to be rejected by the Tribunal by the order dated 19.4.94.

2. While rejecting the revision application, the Tribunal came to the conclusion that the sale transaction was entered into between the original land owner and deceased Parbatbhai and one Subhashchandra Madhavlal Shah. The Tribunal also recorded that no evidence is produced on record to suggest that Subhashchandra Madhavlal Shah owned any agricultural land. The Tribunal concluded that on the date of the sale transaction neither Parbatbhai nor Sureshchandra Shah was agriculturists within the definition of the term under the Tenancy Act nor either of them was agricultural labour or tenant. It was, therefore, found that the sale transaction is contrary to the provisions of section 63 of the Tenancy Act. Despite time being given by the Mamlatdar and ALT to restore the original position of the land, no steps have been taken by the parties. The Tribunal was, therefore, pleased to uphold the orders passed by the revenue authorities.

3. Learned advocate for the petitioners mainly contended that deceased Parbatbhai owned agricultural lands elsewhere and that therefore the order passed by the Tribunal was not justified. He also contended that the initiation of the proceedings by the Mamlatdar was grossly belated and could not have been initiated after long delay. Reliance was placed on the decision of the Hon'ble Supreme Court in the case of Mohamad Kavi Mohmad Amin v. Fatmabai Ibrahim ,(1997) 6 SCC 71 in this regard.

Though there is some discussion in the order passed by the Tribunal that deceased Parbatbhai was an agriculturist in Kutch district, in conclusion the Tribunal found that Parbatbhai is neither an agriculturist nor an agricultural labour nor a tenant. Be that as it may, it is indisputable that the co-purchaser of the land in question Subashchandra Madhavlal Shah was not an agriculturist on the date of the sale of the land nor was he an agricultural labour or a tenant. In that view of the matter, the sale transaction was clearly opposed to the provisions of section 63 of the Tenancy Act. The sale transaction was in favour of two co-purchasers, at least one of whom was admittedly not

an agriculturist. In that view of the matter, the conclusion of the Tribunal were justified.

With respect to the question of delay in initiation of the proceedings, it may be noted that though sale had taken place on 3.2.81, the entries in this regard were certified on 1.7.81. If one considers the date from the certification of the entries in the revenue record, the Mamlatdar had initiated proceedings within a period of approximately two years thereof. Nothing has been pointed from the record to suggest that the petitioners made out any case of prejudice on account of consumption of time between the date of certification of the entries and the initiation of proceedings by the Mamlatdar. No case has been made out that the petitioners had altered their position irretrievably before the date of issuance of notice by the Mamlatdar. Nothing has been produced on record or even suggested that the petitioner had spent considerable amount of time and money in either improvement of the land in question or had made investment for better utilization of the land. The question of delay in initiation of the proceedings is a question of fact to be judged in light of the facts of each case and no straight jacket formula can be provided

which can be applied in every case uniformly. In the present case, agricultural land was sought to be purchased by non-agriculturists in clear breach of the provisions of section 63 of the Tenancy At. No case is made out to suggest that on account of consumption of some time by the Mamlatdar in initiation of the proceedings under section 84C of the Tenancy Act, the position of the petitioners had irretrievably altered or that they had incurred considerable expenditure in improving the land purchased by them. In that view of the matter, even if the Mamlatdar had consumed some time in initiation of the proceedings, such delay, in my opinion, would not be fatal to the proceedings under section 84C of the Tenancy Act. The clear policy of the Legislature to ensure that agricultural lands remain with genuine agriculturists and is not permitted to be purchased by non-agriculturists cannot be allowed to be frustrated on technical ground when I find that neither the delay was so gross as to vitiate the proceedings nor have the petitioners made out a case of prejudice on account of such delay.

4. In the result, the petition fails and is hereby rejected. Rule is discharged with no order as to costs.

At the request of the learned advocate for the petitioners, interim relief granted earlier is continued for three weeks from today.

(Akil Kureshi, J.)

(vjn)